SECURITIES LITIGATION UNIFORM STANDARDS/State Statute of Limitations

SUBJECT: **Securities Litigation Uniform Standards Act of 1998 . . . S. 1260. D'Amato motion to table the Sarbanes/Bryan/Johnson amendment No. 2395.**

ACTION: MOTION TO TABLE AGREED TO, 69-30

SYNOPSIS: As reported, S. 1260, the Securities Litigation Uniform Standards Act of 1998, will establish Federal jurisdiction for most private class action lawsuits involving nationally traded securities in order to stop plaintiff lawyers from circumventing existing Federal law. In 1995, Congress enacted the Private Securities Litigation Reform Act over President Clinton's veto (see 104th Congress, 1st session, vote No. 612). This bill will prevent lawyers from circumventing the provisions of that Act by filing unjust lawsuits against nationally traded securities in State courts instead of in Federal courts.

The Sarbanes amendment would provide that any action brought in a State court that was removed to a Federal court under this Act would still be governed by the State's statute of limitations.

Debate was limited by unanimous consent. After debate, Senator D'Amato moved to table the Sarbanes amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Sarbanes amendment would attack a problem that has not been shown to exist, would encourage forum shopping, and would undermine the basic purpose of this bill. In 1991, the Supreme Court ruled that plaintiffs have 1 year after discovering a violation to file suit, and have no more than 3 years after an injury has occurred to file suit. Most States have longer statutes of limitation. Our colleagues claim that the Federal 1-year/3-year statute of limitations is too short, because they say that in many cases victims of fraud may not find out that they have been victimized until after 3 years have passed. If this claim were true, then one would

(See other side)

YEAS (69)

Republicans (50 or 93%)		Democrats (19 or 42%)
Abraham	Hatch	Baucus
Allard	Helms	Bingaman
Ashcroft	Hutchinson	Boxer
Bennett	Hutchison	Daschle
Bond	Inhofe	Dodd
Brownback	Jeffords	Feinstein
Burns	Kempthorne	Harkin
Campbell	Kyl	Kerry
Chafee	Lott	Kohl
Coats	Lugar	Landrieu
Cochran	Mack	Leahy
Coverdell	McConnell	Lieberman
Craig	Murkowski	Mikulski
D'Amato	Nickles	Moseley-Braun
DeWine	Roberts	Murray
Domenici	Roth	Reid
Enzi	Santorum	Robb
Faircloth	Sessions	Torricelli
Frist	Smith, Bob	Wyden
Gorton	Smith, Gordon	
Gramm	Stevens	
Grams	Thomas	
Grassley	Thompson	
Gregg	Thurmond	
Hagel	Warner	

NAYS (30)

Republicans (4 or 7%)	Democrats (26 or 58%)
Collins	Akaka
Shelby	Biden
Snowe	Breaux
Specter	Bryan
	Bumpers
	Byrd
	Cleland
	Conrad
	Dorgan
	Durbin
	Feingold
	Ford
	Glenn
	Graham
	Hollings
	Inouye
	Johnson
	Kennedy
	Kerrey
	Lautenberg
	Levin
	Moynihan
	Reed
	Rockefeller
	Sarbanes
	Wellstone

NOT VOTING (0)

Republicans (0)	Democrats (0)

VOTING PRESENT(1)
McCain

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

expect that the Supreme Court decision would have led to a flood of new State lawsuits because lawyers would have been blocked from bringing their suits in Federal court. However, between 1991 and 1995 (before passage of the Securities Litigation Reform Act) such State suits were virtually unheard of, and Federal suits continued unabated. Therefore, we know that the Supreme Court's decision did not prove to be an impediment.

In late 1995, the Securities Litigation Reform Act was passed over President Clinton's veto. That Act stopped frivolous class action lawsuits by lawyers against companies. Before passage of that Act, a small group of less than 100 lawyers had perfected a system of blackmailing companies, particularly high-tech companies, with such suits. They filed on extremely tenuous claims and demanded hundreds of millions of dollars. Companies, though they knew that in nearly every case they would win if they went to court, almost always settled those suits rather than going through the time, and often millions of dollars of expense, of defending against them. The lawyers would take their multimillion dollar settlements, keep 86 cents of very dollar for themselves and their investigators, pay a bonus to some token stockholder who had "hired" them to represent the stockholders as a "class" and then would distribute a few pennies to the stockholders who had been "represented." (In actual practice, the lawyers would pay someone to buy stock in a company that they wanted to attack, and would then have that person "hire" them to represent all the stockholders). Companies, which are owned by the stockholders, lost millions of dollars. The situation was so bad that in many cases, companies made regular yearly payoffs to these rip-off artists not to be sued.

Right after the 1995 law was passed these lawyers found a loophole--they could continue to ply their dishonest trade by bringing their unjust suits in State courts. After 1995, for reasons having nothing whatsoever to do with statutes of limitation, the number of security suits brought in State courts soared. It is for that very reason that we are considering this bill today. This bill will close the loophole. From now on, class action suits for nationally traded securities will only be brought in Federal court.

Our colleagues, though, want to make an exception. They want it to be possible for these lawyers, after the Federal statute of limitations has expired, to allege fraud and bring class action suits in State courts. They want 50 separate State statutes of limitations to apply. Those lawsuits would then be removed to Federal court. The only difference is that this provision would give lawyers the choice of picking which statute of limitations they liked best. This amendment would not protect investors--it would just give lawyers the right to go venue shopping.

The whole purpose of this bill is to prevent lawyers from weaseling around the Reform Act we passed last Congress. They did not go to State court to file suits when the Supreme Court made its statute of limitations decision; they only went there after the Federal Government stopped their disreputable conduct by passing the Private Securities Litigation Reform Act. The Sarbanes amendment would give them a little more leeway to bring unjust suits, by allowing them to venue shop for statutes of limitation. Clearly this amendment should be rejected.

Those opposing the motion to table contended:

One of the key objectionable features of the 1995 Private Securities bill was that it did not overturn the Supreme Court's narrow, 5-4 *Lampf* decision which established an inadvisably short statute of limitations for filing suit against a company for securities fraud. Approximately two-thirds of the States have longer statutes of limitations. Now, under this bill, many cases that are determined under State law are going to be shoved into Federal court due to its definition of a class action suit. For instance, if 51 people hire lawyers and file suit because they believe that they were misled by a company, the court could combine their cases into a single suit and throw them into Federal court. If they had filed suit within their State's statute of limitations, but not within the Federal statute of limitations, their case would then be thrown out. We think that result would be unfair. If their case gets thrown into Federal court, their State statute of limitations should still apply. The Sarbanes amendment would give investors in securities this protection. We therefore oppose the motion to table this amendment.